

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27255-9-III

Respondent,

Division Three

v.

THERESA FAYE FRANKLIN,

UNPUBLISHED OPINION

Appellant.

Schultheis, C.J. — Theresa F. Franklin appeals the 24-month enhancement to her drug delivery sentence imposed because the delivery had occurred within 1,000 feet of a school bus route stop. She contends that the trial court made no finding and the State failed to prove that the school bus route stop at issue was designated by the school district. We discern no error and affirm.

On October 19, 2006, Ms. Franklin, accompanied by Edward Hanbrough, went to a residence located at 25109 South Dague Road, Kennewick, Washington where they both delivered methamphetamine to an undercover informant.

Ms. Franklin was charged with two counts of delivery of a controlled substance. The State also sought a sentence enhancement for “the commission of the crime . . . within 1000 feet of a school bus route stop designated by the school district.” Clerk’s Papers (CP) at 21, 22.

At trial, the State called Linn Dahl Grant, the transportation supervisor for the Finley School District. The following examination was conducted:

Q. And as the transportation supervisor are you familiar with the bus stop locations in the Finley area?

A. I am.

Q. And how are bus stops created?

A. Um, basically it’s based on past routes and the new locations of new students as they come into the district.

Q. OK. The residence we’re discussing today is 25109 South Dague Road in Kennewick. Are you familiar with where the closest bus stops are located?

A. I am.

Report of Proceedings (RP) at 164.

Ms. Grant then indicated on a map the location of the school bus stop nearest to that address.

Next to testify was Mary Michelle Phillips, manager of the Benton County Geographic Information System Department. Ms. Phillips identified the map marked by Ms. Grant, which Ms. Phillips generated to scale using computer software. Ms. Phillips testified that the map identified school bus stops based on information she obtained from

the school districts. She set the software program to generate a 1,000-foot buffer zone around the school bus stops. The trial court found the subject residence to be within the 1,000-foot radius of the school bus stop.

Ms. Franklin was convicted of only one count after a bench trial. The trial court entered findings of fact related to the enhancement:

6. A Finley School District bus stop is located on Dague Rd, just west of the residence where the defendant delivered the methamphetamine to the confidential informant.

7. The residence is well within the 1,000 feet requirement of the bus stop under the protected zone allegation.

CP at 17-18.

It then entered this conclusion of law:

The defendant is guilty of the crime of Delivery of a Controlled Substance, methamphetamine, as charged in the amended information under count 1. The defendant committed this act within 1,000 feet of a designated school bus stop.

CP at 18 (Conclusion of Law 1).

Ms. Franklin appeals the imposition of the sentence enhancement. RCW 69.50.435(1)(c) provides that any person who delivers a controlled substance listed under RCW 69.50.401 “[w]ithin one thousand feet of a school bus route stop designated by the school district” shall be sentenced to an additional 24 months above the presumptive sentence. Ms. Franklin contends that the trial court did not find and the State failed to

prove beyond a reasonable doubt that the school bus route stop was designated by the school district.

We review a trial court's decision following a bench trial to determine whether substantial evidence supports any challenged findings and whether the findings support the conclusions of law. *State v. Carlson*, 143 Wn. App. 507, 519, 178 P.3d 371 (citing *Dorsey v. King County*, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988)), *review denied*, 164 Wn.2d 1026 (2008).

“[D]ue process requires the State to prove every element of the charged crime beyond a reasonable doubt.” *State v. Smith*, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980), *overruled on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977).

The evidence shows that the transportation supervisor of the Finley School District had knowledge of the school bus stops in Finley and pointed them out on a map. The creator of the map obtained the bus stop locations from the school district. Viewed in the

light most favorable to the State, this evidence is sufficient to show that the school bus stops were designated by the school district.

Ms. Franklin argues that the statutory language—that the bus stop was “designated by the school district”—was not used by a witness or explicitly found by the court. RCW 69.50.435(1)(c).

Ms. Grant knew how the bus stops were “created.” RP at 164. As a transitive verb, designate is defined as “to decide upon : nominate, delegate, appoint; *esp* : to assign officially by executive or military authority.” Webster’s Third New International Dictionary 612 (1993). Similarly, create, as defined as a transitive verb means “to cause to be or to produce by fiat or by mental, moral, or legal action . . . appoint.” *Id.* at 532. The use of the word “created” in the context of its use is sufficient to meet the statutory requirement that the school bus stop was designated by the school district. RCW 69.50.435(1)(c).

The trial court found that “[a] Finley School District bus stop” was “just west” of the residence where the drug delivery took place and “well within” the 1,000-foot protected zone. CP at 17, 18. It then concluded that “[Ms. Franklin] committed [the crime] within 1,000 feet of a designated school bus stop.” CP at 18. Although the trial court did not refer to the school district in its conclusion of law, it did so in its findings of fact. The only determination that could be reasonably reached is that the trial court

decided that the Finley School District designated the bus stop.

In her statement of additional grounds for appeal, Ms. Franklin essentially challenges the sufficiency of the evidence. She identifies inconsistencies and weaknesses in the witnesses' testimony. She also points out that no drug money or drugs were ever discovered on her. On review, however, we must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

The informant testified that a woman named Theresa was present during a methamphetamine transaction. Detective Curtis Smith testified that at the time of the delivery the informant positively identified a photograph of Ms. Franklin as Theresa, the source of the drugs. Mr. Hanbrough gave a statement to Detective Smith that both he and Ms. Franklin served as middlemen to support their addiction to methamphetamine. This evidence is sufficient to prove the delivery and guilty knowledge elements of delivery of a controlled substance. *State v. Nunez-Martinez*, 90 Wn. App. 250, 253, 951 P.2d 823 (1998).

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the

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Washington Appellate Reports but it will be filed for public record pursuant to RCW

2.06.040.

Schultheis, C.J.

WE CONCUR:

Kulik, J.

Korsmo, J.